

EXHIBIT H

judgment debtor exam.TXT

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII
3 WAYNE BERRY, a Hawaii) CIVIL NO. CV03-00385 SOM-LEK
4 citizen) (Copyright)
5 Plaintiff,)
6 vs.)
7 HAWAIIAN EXPRESS)
8 SERVICE, INC, et al.,)
9 Defendants.)
9

10

11

12

13 DEPOSITION OF WAYNE BERRY

14 Taken on behalf of the Defendants C&S Logistics of
15 Hawaii, LLC, C&S Wholesale Grocers, Inc., C&S
16 Acquisitions, LLC, ES3, LLC and Richard Cohen, at the
17 offices of Kobayashi Sugita & Goda, 999 Bishop
18 Street, Suite 2600, Honolulu, Hawaii, on Monday,
19 August 13, 2007, commencing at 11:31 a.m. Pursuant to
20 Notice.

21

22

23

24 Reported by:
25 Priscilla Gonzaga, CSR #127
25 Notary Public, State of Hawaii

0

2

1 APPEARANCES:

2 For the Plaintiff:

judgment debtor exam.TXT
TIMOTHY J. HOGAN, ESQ.
1050 Bishop Street, Number 433
Honolulu, Hawaii 96813

For the Defendants C&S Logistics of Hawaii, LLC, C&S Wholesale Grocers, Inc., C&S Acquisitions, LLC, ES3, LLC and Richard Cohen:

LEX R. SMITH, ESQ.
Kobayashi Sugita & Goda
999 Bishop Street, Suite 2600
Honolulu, Hawaii 96813

For the Defendant Guidance Software:

MARGERY S. BRONSTER, ESQ.
JAE PARK, ESQ.
Bronster Crabtree & Hoshibata
Pauahi Tower, Suite 2300
1001 Bishop Street
Honolulu, Hawaii 96813

For the Defendant Brian Christensen:

LYLE HOSODA
345 Queen Street, Suite 804
Honolulu, Hawaii 96813

2

3

1 INDEX

2 EXAMINATION BY: PAGE

3 MR. SMITH 4

5 EXHIBITS FOR IDENTIFICATION:

6 EXHIBIT A 6

judgment debtor exam.TXT

17 Q And that would be sometime in 2007?

18 A Yes.

19 Q And you can't remember whether it was within
20 the last month or not?

21 A No.

22 Q Are you renting or do you own a home in
23 Florida now?

24 A Just rent.

25 Q And who pays the rent on your residence in

□

27

1 Florida?

2 A To who, the owner of the home or --

3 Q Well, I don't know. Do you pay rent for the
4 place you live now?

5 A Yes. I pay part of the rent.

6 Q How much rent do you pay?

7 A About somewhere between a thousand and 1100
8 a month.

9 Q And to whom do you pay your rent?

10 A To Sally Apgar.

11 Q Do you pay by check?

12 A Yes.

13 Q What bank is the check drawn on?

14 A The Bank Atlantic. You've got the documents
15 on here.

16 Q How long have you had the account with Bank
17 Atlantic?

18 A I got it shortly after moving to Florida.

19 Q Did you have any account -- any bank
20 accounts prior to the Bank Atlantic account?

judgment debtor exam.TXT
21 MR. HOGAN: Objection, vague as to time.
22 Q (By Mr. Smith) In the five years prior to
23 moving to Florida.
24 A Not -- yes.
25 Q Where?

0 28

1 A It's in here. Scottrade.
2 Q Do you still have an account with Scottrade?
3 A Yes.
4 Q And where -- is that a Scottrade office in
5 Hawaii?
6 A Yes.
7 Q Any other accounts that you had in the last
8 five years other than Scottrade and Bank Atlantic?
9 A Yes. They're also in here. There's an
10 account at optionsxpress.
11 Q Where?
12 A Optionsxpress. There's no E in that.
13 Q Okay.
14 A And there's an account at E Trade. There's
15 an E in that.
16 Q Okay. Well, that takes us right to item 2
17 on the list. Can you show me where the account
18 statements are that you have produced?
19 A I grabbed what I could find and I think if
20 you go to page 28, it's where they start.
21 Q So page 28 as it relates to optionsxpress,
22 correct?
23 A Yes.
24 Q And it refers to Wayne's account overview as
25 of 8/11/2007, correct?

judgment debtor exam.TXT

29

1 A Yes.

2 Q And it reflects that you have -- your
3 account has a value of \$5,032?

4 A Correct.

5 Q Have you made any deposits into that account
6 in the last year?

7 A Yes.

8 Q How many?

9 A I don't know offhand.

10 Q Have you made any withdrawals from that
11 account in the last year?

12 A I may have but I don't think so.

13 Q What is page 29?

14 A That's the Scottrade account I told you
15 about. These people -- option stuff they don't send
16 statements. They don't have the record type
17 printing. And Scottrade I lost my password. I
18 couldn't even do a current screen print. So I
19 photocopied the books so you could see what it was.

20 Q What is your -- the balance on your
21 Scottrade account?

22 A I haven't a clue.

23 Q Is it more or less than \$20,000?

24 A I haven't a clue. I honestly don't know.

25 Q So is it more or less than \$100,000?

30

1 A I don't think I have \$100,000 so no. It's
2 got to be less than that.

3 Q judgment debtor exam.TXT
4 So less than 100,000 but you honestly don't
5 know whether it's more or less than 20,000?

5 A I don't think it's 20,000. It's less than
6 that unless someone's been very nice to me that I
7 don't know about.

8 MR. HOGAN: Scott.

9 THE WITNESS: Yeah, Mr. Scott maybe.

10 Q (By Mr. Smith) The address on Keahole Street
11 that's reflected on your check, where is that?

12 A That's in Hawaii Kai.

13 Q And is that a home in Hawaii Kai?

14 A It's that postal service. It's a street
15 address.

16 Q It's a mail drop in Hawaii Kai Shopping
17 Center?

18 A It was. They're out of business.

19 Q Okay. And they charged you a monthly fee
20 for the use of that address, right?

21 A Yes.

22 Q Who paid that fee?

23 A I did.

24 Q And what was the source of the funds? Did
25 you pay with a check?

31

1 A Not sure but I think I always paid them
2 cash.

3 Q Did you give them a credit card number?

4 A I don't think so.

5 Q By the way, when I asked you if you had any
6 credit cards, you said no, only a debit card. Have
7 you had any credit cards in the last five years?

judgment debtor exam.TXT

8 A Not that I can recall. I think the last
9 credit card I may have had was in maybe 2001.

10 Q Who was the issuing bank of that credit
11 card?

12 A I don't know. A long time ago.

13 Q And why does the year 2001 occur to you as
14 the time when you last had a credit card?

15 A Just it's -- I can just recall the
16 approximate date.

17 Q But you can't remember -- was it a bank
18 that's in Hawaii?

19 A No.

20 Q Were you a resident of Hawaii at that time?

21 A Yes.

22 Q What is your balance in the E Trade account
23 reflected on page 30?

24 A \$5000.96.

25 Q Page 31 reflects a Bank Atlantic account

□

32

1 with \$38,878 in it?

2 A Yes.

3 Q What is the source of the funds that is in
4 the Bank Atlantic account?

5 A That came from Y. Hata.

6 Q Has any money got into the Bank Atlantic
7 account from any source other than Y. Hata?

8 A Not that I can recall. I don't think so.

9 Q And this account reflected on page 31 is the
10 source from which you pay your rent, is that right?

11 A During this last year? I'm trying --

12 Q judgment debtor exam.TXT
13 I'm happy to narrow the question to during
14 this last year.

15 A Yes.

16 Q What source did you use to pay your rent
17 before this past year?

18 A Some of -- as we're talking, I remember more
19 as we talk. Some of this may have come from the
20 Scottrade account. That's an older account. It goes
21 back away further. I'm trying to remember when I set
22 that up.

23 Q Did you make any payments to Sally Apgar out
24 of the Scottrade account?

25 A I believe I did.

Q What was the reason for those payments?

33

1 A Rent payment, repayment of loan, things like
2 that.

3 Q How much has Sally Apgar loaned you?

4 A I don't know.

5 Q Well, you indicated that you've made some
6 repayments of the loan from her with your Scottrade
7 account. So --

8 A I said I may have. I'm not completely sure
9 and I'm not exactly sure of the balances or --

10 Q Does Ms. Apgar know how much you owe her?

11 MR. HOGAN: Objection, calls for
12 speculation.

13 Q (By Mr. Smith) You may answer.

14 A I don't know.

15 MR. SMITH: I want to state for the record
16 that the documents that you have provided in
Page 28

judgment debtor exam.TXT

17 connection with your accounts are incomplete and do
18 not meet the requirements of the court's order
19 entered May 30, 2007. And that I'm reserving all
20 rights related to the lack of a complete compliance
21 under the documents.

22 MR. HOGAN: You know, counsel, why don't you
23 state for the record what you think is missing rather
24 than just play this little game so that you can keep
25 Mr. Berry in your little judgment collection

□

34

1 nightmare for the rest of his life. Why don't you
2 just put on the record what you think is missing if
3 you think anything is missing.

4 MR. SMITH: That's a very fair request
5 although you don't need to be quite so grouchy about
6 it.

7 MR. HOGAN: Well, your motivation is quite
8 clear, Mr. Smith, that your motivation has something
9 to do with some personal longing for Sally Apgar that
10 you seem to have.

11 MR. SMITH: The documents that have been
12 produced -- the order says all bank statements or
13 reports with respect to checking accounts, savings
14 accounts, money market accounts or other bank
15 accounts of any nature in your name to which you are
16 signatory for the past five years. These records are
17 highly incomplete as they relate -- they contain far
18 less than all of those documents. I have -- there
19 are a few pages from those accounts and he has
20 identified the accounts. And I'm just stating that

21 judgment debtor exam.TXT
they're not complete.

22 MR. HOGAN: And have you asked him whether
23 he has possession of any of the documents? I mean
24 isn't that usually the question? Do ever -- did you
25 have them, did you fail to bring them?

0

35

1 It's pretty clear, Mr. Smith, that this is
2 simply an attempt to bushwhack Mr. Berry. At least
3 ask him the question about whether or not he's
4 complied with the request and whether he -- and what
5 efforts he made to comply so you have a record.

6 Q (By Mr. Smith) Other than the accounts that
7 you have identified at pages 28 through 34, so what
8 is that, six or seven pages, do you have any other
9 accounts relating to or within the description
10 contained in paragraph 2 which I'll read to you.
11 "All bank statements or reports with respect to a
12 checking account, savings account, money market
13 account or other bank account of any nature in your
14 name or to which you are signatory for the past five
15 years."

16 A This is all I've got. You've got something
17 from each of the accounts. And I grabbed whatever
18 papers I had from each of those accounts.

19 Q Okay. So my question is are there any other
20 accounts for the past five years?

21 A Not that I'm aware of. Not that I could
22 find. I think that's it.

23 Q And you have -- you possess no records
24 relating to any of those accounts other than the six
25 pages that you've brought here today?

judgment debtor exam.TXT

36

1 A That's all I could find. And I had to --
2 like I say, three options accounts, they don't even
3 send monthly statements or anything. So I gave you a
4 screen print off the internet.

5 Q Okay. Number 8 on the list. Let me just
6 confirm. Items 3, 4, 5, 6 and 7, it's your testimony
7 that you have nothing?

8 A Yes.

9 Q Number 8 on the list, deeds, contracts or
10 other evidence of ownership in real property in which
11 you currently hold or have held an interest in the
12 past five years.

13 A None.

14 Q Number 9, life insurance.

15 A None.

16 Q All documentation pertaining to any accounts
17 receivable or notes receivable from any person or
18 entity to you.

19 A I don't think anyone owes me any money and I
20 don't have any documents to it. To your clients, Mr.
21 Hosoda, Dillon and Noah owe me money but I don't have
22 any documents that state that.

23 Q So you're not aware of anyone who owes you
24 any money?

25 MR. HOGAN: Objection, that misstates his

37

1 testimony.

2 THE WITNESS: I think I just --

3 Q judgment debtor exam.TXT
4 (By Mr. Smith) So you identified Dillon and

4 Noah?

5 A Yes.

6 Q Anybody else who to your understanding owes
7 you money?

8 MR. HOGAN: I'm going to object. Other than
9 the defendants in this case that may be judgment
10 debtors?

11 Q (By Mr. Smith) I'll let you answer. Whoever
12 in the word you think owes you money.

13 MR. HOGAN: Objection, vague as to what the
14 term "owes" means.

15 THE WITNESS: My personal definition of
16 owing me money, it's a long list. But as far as
17 something I think you're looking for here where you
18 could go take the document and collect money from
19 someone to satisfy a judgment, no. Only the stuff
20 you're aware of in the court cases and things like
21 that. I don't think even Dillon and Noah, I don't
22 think you could collect from them because there's no
23 written documentation that's says that they owe the
24 money.

25 Q (By Mr. Smith) Actually, I'm asking for you

0

38

1 to identify anybody who you think you have a valid
2 claim against.

3 A This is three hours.

4 MR. HOGAN: I'm going to object. It calls
5 for a legal conclusion. Why don't you ask me the
6 question. You're going to ask me a question as it
7 relates to litigation and ongoing litigation, I mean

judgment debtor exam.TXT

8 it's just -- you've done this before. I believe this
9 is creditor harassment and Fair Debt Collection
10 Practices Act is very well in place in this
11 deposition.

12 MR. SMITH: You may answer.

13 THE WITNESS: All the parties in this
14 lawsuit.

15 MR. SMITH: Okay.

16 THE WITNESS: And I believe when the appeals
17 are done, they will all owe me money.

18 MR. SMITH: Okay.

19 THE WITNESS: I think when other issues are
20 done, I think just about all the attorneys, maybe
21 with one or two exceptions, will owe me money.

22 Q (By Mr. Smith) All the attorneys in the suit
23 that we're here on today?

24 A In all the suits we're here on today. Okay?

25 Q All the attorneys in any suit that --

39

1 A You've got a eight year history here, okay?

2 Q I know you're talking about me. I'm just
3 trying to understand if you're talking about only
4 this case or more than this case.

5 A I'm talking about the first case, the second
6 case and things to come. Okay. Let's leave it at
7 that.

8 Q Okay. So all the attorneys that have
9 opposed your claims in any case you filed up to
10 today?

11 A Oh, no. All the attorneys who advised their

12 judgment debtor exam.TXT
clients to commit criminal acts of infringements.

13 Q I'm only asking for who, okay. Can you just
14 list who you think?

15 A I don't want to get into a debate with you
16 'cause we'll take off and we'll be here for ten
17 hours. But you changed the question on me there
18 twice.

19 Q The question is who owes you money?

20 A Okay, I told you. All the people in the
21 litigation and the people in -- I believe the
22 attorneys who have performed badly in the
23 litigations.

24 Q Okay.

25 A That's a nice way to put it if you

0

40

1 understand me.

2 Q All I'm asking for is for you to say what
3 you mean by the litigation.

4 A I'm talking about if we can call Berry One
5 and Berry Two. First one Berry vs. Fleming. Second,
6 Berry vs. Hawaiian Express, et al. And the third one
7 with the lenders that's a whole thing by itself and
8 it's probably going to be -- we'll see what happens
9 with that.

10 Q Okay. Other than the lawyers who represent
11 defendants in those cases, is there anybody else that
12 you think owes you money?

13 MR. HOGAN: I'm going to object. It's vague
14 if you mean others and you're not including the
15 defendants as well.

16 MR. SMITH: Fair enough.
Page 34

judgment debtor exam.TXT

17 Q (By Mr. Smith) Other than everybody you've
18 identified up to now?

19 A Well, probably the largest claim someone
20 owes me money is the United States Government.

21 Q Okay. Anybody else?

22 A No. I think they'll take care of the other
23 people. They'll collect it from others.

24 Q What about do you believe you have any
25 claims against a lawyer other than the lawyers who

0

41

1 represented the defendants in the litigation that
2 you've already described?

3 A Yes.

4 Q Who?

5 A Well, I can think off the top of my head is
6 probably Roger Fulgrum at Baker Botts.

7 Q Anybody else?

8 A Brad Buehler but I don't think he's an
9 attorney.

10 Q Brad, what's his last name?

11 A He's your friend. You should know it.
12 Buehler, B-u-e-h-l-e-r or something like that.

13 Q Anybody else?

14 A Probably others but I have to sit and think
15 about it a while.

16 Q As you sit here today, are you able to think
17 of any others that you -- any other lawyers that you
18 think you have claims against other than what I've
19 listed or what you've listed so far?

20 A There's others but I can't remember their

judgment debtor exam.TXT
21 names. I know one is at Sonnenschein who advised the
22 PTC or I guess it was in Fleming, the -- what do they
23 call that when they've got the board of directors
24 and -- audit committee, audit committee. Advised the
25 audit committee it was okay for him to start wiping

0

42

1 computer files and records in the phase of the air
2 defense with the FCC. He's the one that helped
3 Guidance --

4 Q Alright. We didn't ask you that question.

5 A Yes, you did.

6 Q I think you mentioned Sonnenschein and
7 that's fine. If you can only name the firm and not
8 the individual lawyer, that's fine. Any other
9 lawyers or law firms that you believe owe you money
10 other than the ones you've named so far?

11 A Lynch Ichida, Mr. Hogan's old firm.

12 Q Any other lawyers or law firms that you
13 believe owe you money other than the ones you've
14 listed so far?

15 A There may be some but not to a point where I
16 can pursue them yet.

17 Q Regardless of whether you're going to pursue
18 the claim, what other lawyers or law firms do you
19 believe --

20 A I can't remember offhand.

21 Q As you sit here today, you can't think of
22 any others?

23 A There's others but I can't think of the
24 names. And you don't like my stories describing it
25 so I don't know what to tell you.

judgment debtor exam.TXT

43

1 Q Are they Hawaii law firms or located
2 somewhere else?

3 A I don't know.

4 Q Okay. Item 11 on the list. Check stubs,
5 have you produced any check stubs?

6 A I don't have any.

7 Q Cancelled checks, have you produced any
8 cancelled checks?

9 A I don't have any.

10 Q Ledgers, have you produced any ledgers?

11 A I don't have any.

12 Q Other documentation illustrating any wage,
13 salary or other forms of compensation you have
14 received in the past five years?

15 A I produced everything I have.

16 Q And what is that? You produced the contract
17 with Hawaiian or with Y. Hata. Have you produced
18 anything else within the description of number 11 on
19 this list?

20 A No. The only thing I can think that could
21 have been in there could have been some 1099 or
22 something like that. And in moving and shuffling
23 boxes, I've looked, I can't find it. I know that
24 things were lost moving around so.

25 Q How does Y. Hata pay you?

44

1 A By check.

2 Q They pay you with check?

3 A judgment debtor exam.TXT
4 Q Yes.
5 A And do they mail that check somewhere?
6 Q Yes.
7 Q Where do they mail it?
8 A To addresses in here. I guess it's not. I
9 think it's 5500 Military Trail and that's in Jupiter,
Florida and I think it's 33468.

10 MR. HOGAN: I'll state for the record that
11 in the Lynch Ichida withdrawal and substitution that
12 they filed recently in the case, they put that
13 address in and I believe it's in the record in the
14 case.

15 MR. SMITH: Okay. And is -- do you know if
16 the address he's given is the correct one he's --

17 MR. HOGAN: Well, Military Trail is what
18 rings a bell. I don't have it specifically committed
19 to memory.

20 Q (By Mr. Smith) Okay. What is 103 East
21 Thatch Palm Circle, Jupiter, Florida?

22 A That's a house address.

23 Q And who lives at that house?

24 A I do.

25 Q Anybody else?

45

1 A Sally Apgar.
2 Q And I take it the Military Trail address is
3 not a house address?
4 A It's a street address. It's a UPS store.
5 Q Okay. And what do you do with the check
6 from Y. Hata when it arrives?
7 A I deposit it to the Bank Atlantic normally.

judgment debtor exam.TXT

8 Q Okay. Did Y. Hata pay by a check before you
9 lived in Florida?

10 A Yes.

11 Q And where did they mail the check?

12 A The Hawaii Kai address, the -- my P.O. Box
13 where the guy is no longer in business.

14 Q And what did you do with the check when you
15 received it there?

16 A Usually cash it.

17 Q Where did you go to cash it?

18 A I think maybe Bank of Hawaii. That's where
19 Y. Hata's account was and they would cash it for me.

20 Q The checks were drawn on Y. Hata and you
21 cashed them?

22 A Yes.

23 Q You didn't have an account that you
24 deposited them into the way you're doing now that you
25 live in Florida?

0

46

1 A No.

2 Q And it's your sworn testimony you have no
3 record of any of those payments that you could have
4 produced today?

5 A Not that I could find, no.

6 Q How often does Y. Hata pay you?

7 A Over what period of time? I mean this last
8 recently?

9 Q Well, let's say in 2007, do you receive a
10 check once a month or --

11 A Once a month. Sometimes they skip a month.

judgment debtor exam.TXT

12 It varies.

13 Q What about in 2006?

14 A Same thing.

15 Q 2005?

16 A Pretty much consistently over the term of
17 the contract they pay monthly or sometime skip a
18 month or two but catch up.

19 Q The checks come monthly in general at least?

20 A In general.

21 Q Number 12. Pleadings containing the full
22 caption of any lawsuit that you've been a party to.
23 I notice you do have some captions in here. Have you
24 produced copies of the caption of any suit you've
25 been a party to in the last five years?

□

47

1 A All the captions I had, yes.

2 Q Are there any suits that you have been a
3 party to in the last five years for which you have
4 not produced a caption today?

5 A Not that I'm aware of.

6 Q 12. Lease agreements or other contracts
7 providing for payment of any monetary sums.

8 A That's 13.

9 Q I'm sorry, 13. Lease agreements or other
10 contracts providing for payment of any monetary sums
11 to you from any individual or entity.

12 A I produced the Y. Hata contract. That's all
13 I could find to be responsive to that.

14 Q Okay. Are you aware of anything that's
15 responsive to this that you could not find a copy of?

16 A No.

judgment debtor exam.TXT

17 Q So it's your sworn testimony today that
18 there are no lease agreements or other contracts
19 providing for payments of any monetary sum to you
20 from any individual or entity other than Y. Hata?

21 A As long as we leave the definition of the
22 term contract does not include anything regarding the
23 lawsuits and all that stuff, yes.

24 Q 14. Qualified retirement plans in which you
25 have an interest or that have been adopted by your

□

48

1 employer including but not limited to 401(k) plans
2 profit-sharing plans, pension plans and simplified
3 employee pension plans.

4 A No.

5 Q I take it then your answer to 15 is none?

6 A Correct.

7 Q Non-qualified deferred compensation plans?

8 A None.

9 Q 17. Stock certificates in corporations of
10 which you are a record holder of any stock.

11 A None.

12 Q What about Atlantic Pacific International,
13 Inc.?

14 A I think it's gone. I wouldn't consider that
15 an active company.

16 MR. HOGAN: I'll state for the record that
17 the official -- the original shares were given to the
18 U.S. Attorney's office. I delivered them the weekend
19 before Lokelani's trial and I had delivered them on a
20 Friday. I dropped a little box and if you want to

21 get them, call the FBI. They have them.

22 Q (By Mr. Smith) Do you have an understanding
23 whether you are the owner of the shares of Atlantic
24 Pacific International, Inc.?

25 A I don't know how that works once

49

1 everything -- company's done and gone. I don't know
2 if I could answer that one way or another.

3 Q Okay.

4 A I was at one time.

5 Q Does Atlantic Pacific International, Inc.
6 have any assets at the present time to your
7 knowledge?

8 A Not that I'm aware of.

9 Q You were a president and sole shareholder of
10 Atlantic Pacific International, Inc. at one time,
11 right?

12 A Yes.

13 Q Did anybody succeed you as president of
14 Atlantic Pacific International, Inc.?

15 A Not that I'm aware of.

16 Q 18. Balance sheets, income and expense
17 statements and other corporate documents of the
18 corporation in which you hold stock. I take it the
19 answer is no?

20 A Correct.

21 Q All -- 19. All documents indicating any
22 interest in which you may have or evidence of
23 ownership of any individual retirement account?

24 A None.

25 Q 20. Trust documents by which you have

judgment debtor exam.TXT

50

1 transferred money or property to any trust within the
2 last five years.

3 A None.

4 Q Have you transferred any property to a trust
5 in the last five years?

6 A No.

7 Q Do you have any individual retirement
8 accounts?

9 A No.

10 Q Did I -- do you have any deferred
11 compensation plans?

12 A No.

13 Q Do you have any 401(k) plans, pension plans
14 or simplified employee pension plans?

15 A No.

16 Q Are you a beneficiary of any trust?

17 A I don't think so.

18 Q Are there any -- are you aware of any trusts
19 that you might be a beneficiary of?

20 A The only reason I said I don't think so is I
21 know my father had a trust set up. He's passed away.
22 And there was the last documents I saw in the '90s I
23 was the executor and sole beneficiary. But I think
24 he probably changed that. I never saw the change.

25 Q Your father had a judgment against you at

51

1 one time, right?

2 A Yes.

3 Q judgment debtor exam.TXT
4 A what is the status of that judgment?

5 A Expired.

6 Q Since your father passed away, who became
7 the owner of that judgment?

8 A I have no idea.

9 MR. HOGAN: For what it's worth, it probably
10 could be him.

11 THE WITNESS: I may still be the trustee and
12 executor and sole beneficiary for all I know. No
13 one's told me.

14 Q (By Mr. Smith) You haven't heard anything
15 from the estate of your father after he passed away?

16 MR. HOGAN: That wasn't renewed within ten
17 years.

18 THE WITNESS: I've heard absolutely nothing.
19 No one notified me, nothing.

20 Q (By Mr. Smith) I'm not limiting the question
21 to the judgment now. I'm asking more generally
22 whether you heard anything from anyone on behalf of
23 your father's estate after he passed away.

24 A I've heard from no one regarding my father.
25 I had to find a death record on my own.

Q Other than your father's estate, are you

0

52

1 aware of any other trusts in which you may have an
2 interest?

3 A I'm not aware of any, no.

4 Q Number 21. Documents reflecting transfer of
5 title of any assets by you in the last five years.

6 A To me or from me?

7 Q Question 21 is asking about transfers made
Page 44

judgment debtor exam.TXT

8 from you to someone else.

9 A From me to someone else. No.

10 Q Okay. What about transfers of assets to you
11 from someone else?

12 A Is that one of the questions?

13 Q That's my question.

14 A Okay. You got the document too. The second
15 EULA addendum which I've filed with the United States
16 Copyright Office where Fleming transferred anything
17 they wrote regarding that freight control system to
18 me and I'm . . .

19 Q Okay.

20 MR. HOGAN: It's all the software your
21 client is using out there at Kapolei.

22 THE WITNESS: Right.

23 Q (By Mr. Smith) Okay. So that's a transfer
24 to you from somebody else?

25 A Yes.

□

53

1 Q Is a Second EULA Addendum. Says the
2 document is entitled Second EULA Addendum so I'll
3 have no trouble finding it?

4 A Oh, I'm sure you can find it. It's -- we
5 jockey back and forth about the title but that's what
6 it is.

7 Q Okay. I think I know what you're talking
8 about. So that is the document that your testimony
9 is that transferred assets to you. Are you aware of
10 any other transfer of assets to you over the last
11 five years?

12 A judgment debtor exam.TXT
13 No, I didn't say it was transferred to me
14 over the last five years. That's a transfer to me of
15 1999 continuing to this day. And all I said was I
16 am -- I filed it. I don't know if it's recorded yet
17 with the United States Copyright Office just to be
18 clear.

19 Q okay. My question is are you aware of any
20 other transfers of assets to you from somebody else
21 A No.

22 Q Where did you purchase -- well, we discussed
23 some firearms that you own, right?

24 A Yes.

25 Q Where did you acquire them?

54

1 A In Hawaii.

2 Q And can you be more specific about where in
3 Hawaii you acquired them?

4 A I can't remember the gun store.

5 Q Where was it located?

6 A It seems like it was over in the Mapunapuna
7 area.

8 Q Okay. Do you have any records relating to
9 those weapons?

10 A I'm sure I do. And the other one was
11 acquired at a gun store. It used to be close to
12 Fisher. I think they went out of business.

13 Q How many firearms do you own?

14 A Three.

15 Q Can you list them please?

16 A A Benelli M90 and two H & K USP 45s.

judgment debtor exam.TXT

17 MR. HOGAN: Did your friends find another
18 trail to Mr. Berry's house, Lex?

19 Q (By Mr. Smith) The first one, does that
20 start with a B, Benelli?

21 A Yes.

22 Q How much did you pay for it?

23 A I don't recall.

24 Q What was the source of the money that you
25 used to pay for it?

□

55

1 MR. HOGAN: I'm going to state for the
2 record that this has very little to do with a proper
3 judgment debtor examination.

4 I'll state for the record that there is a
5 series of time records where on a weekend in which
6 Mr. Berry's brother-in-law was assaulted in his house
7 in which we believe persons carrying firearms,
8 entered the state of Hawaii on a private jet and Mr.
9 Smith met with them and that he has time records were
10 excised in the first case for approximately \$4,000 of
11 time for the very days that these gentlemen were
12 here.

13 I believe these questions are being asked
14 for the purpose of advancing racketeering activities
15 that has occurred and will occur again in the state
16 of Hawaii. I believe it violates the Fair Debt
17 Collections Practices Act as well as the RICO Act.
18 And you can answer the question. And it's meant to
19 intimidate the witness.

20 Q (By Mr. Smith) The question was what was the

judgment debtor exam.TXT
21 source of the money you used to pay for the Benelli?
22 A I guess it's money I earned at API.
23 Q When did you buy the Benelli?
24 A Mid '90s somewhere.
25 Q Then you identified two H & K firearms.

0 56

1 What was the date that you acquired those?
2 A I think it was shortly after you sent the
3 goons to my house. So what was that? You should
4 know.

5 Q Let me just state for the record that I deny
6 all of the accusations about me sending goons to your
7 house.

8 A Can we get your time records for these ten
9 days?

10 Q Just so that it's clear, I state for the
11 record that this is a bunch of hogwash --

12 A Can we get your missing --

13 Q Now, I ask the questions here. And the
14 question is when did you buy the H & K weapons?

15 A Shortly after -- I told you. Shortly after
16 that was November 2001. I don't remember exactly
17 when. Sometime after that.

18 Q And what was the source of the funds for
19 those weapons?

20 A I don't recall.

21 Q You said that the United States Government
22 owes you a lot of money. Could you please explain
23 what the government owes you money for?

24 A For using the freight control system that
25 you and Mr. Fulgrum got the copy from the United

judgment debtor exam.TXT

57

1 States Copyright Office without permission and used
2 it to verify KBR's LOGCAP contract in 2002.

3 Q Anything else?

4 A I think that's enough.

5 Q I'm not asking whether you think it's
6 enough. I'm asking whether there's any other basis
7 on which you think the U.S. Government owes you
8 money?

9 A I'm sure it goes into other departments and
10 other things but, you know, government auditors can't
11 even get a look at some of this stuff from KBR so I
12 guess it's just going to be -- just got to file a
13 claim and see where it goes. And I guess that will
14 kind of detail it and figure it out.

15 Q Now, what -- does KBR stand for something?

16 A Kellogg Brown & Root.

17 Q And you said something about log caps,
18 correct?

19 A Yes.

20 Q What does that mean?

21 A That's the logistics contract that KBR won
22 in December of 2001 right after the 9/11 incident to
23 supply the military with logistic support for various
24 products, food, restaurant supplies, gasoline, things
25 like that in areas of operations.

58

1 Q Okay. And you believe the U.S. Government
2 is using something that you authored in order to

judgment debtor exam.TXT

3 perform that contract?

4 A Yes.

5 Q Or that Kellogg Brown & Root is using
6 something you authored to perform their contract?

7 A I'm not sure how that would work. Kellogg
8 Brown & Root charged the government a large amount of
9 money for an access database produced to the United
10 States Government they claim to be proprietary and
11 secretive. So they'll sort it out somehow I'm sure.

12 Q Okay. Is this a lawsuit that you're
13 planning on filing soon?

14 A Yes.

15 Q Are you planning on filing it in Hawaii?

16 A No. It will be in the U.S. Court of Claims.

17 Q Okay. 22. Document reflecting transfers of
18 real property by you within the last five years.

19 A If I understand the definition of real
20 property, I don't believe there are -- I had any to
21 transfer. There's no transfers.

22 Q So you have made no transfers of real
23 property in the last five years?

24 A Not that I'm aware of.

25 Q Do you own any real property today?

59

1 A Not that I'm aware.

2 Q 23. Gift tax returns for the last five
3 years.

4 A I don't have any.

5 Q Have you made any gifts to anyone in the
6 last five years?

7 A Not that I'm aware of.

judgment debtor exam.TXT

8 Q You made any loans to anyone in the last
9 five years?

10 A Not that I can recall.

11 Q All partnership agreements in which you are
12 either a general partner or limited partner.

13 A I don't believe I've entered into any
14 partnership agreements.

15 Q So as far as you know, you're not a party to
16 any partnership agreement today?

17 A I don't think so.

18 Q What about with Alan Sinesky?

19 A There's no partnership agreements.

20 Q Do you have any co-venture arrangements with
21 Mr. Sinesky at all?

22 MR. HOGAN: Objection, vague as to the term
23 co-venture. Calls for a legal conclusion.

24 Q (By Mr. Smith) You may answer to the extent
25 you understand.

0

60

1 A There's no co-venture agreements of any kind
2 between him and me.

3 Q 25. Any contracts between you and anyone
4 else including but not limited to the government for
5 any works performed by you under which you are owed
6 any money?

7 A I don't think there are any.

8 Q There are none other than Y. Hata?

9 A I don't believe so. That's correct.

10 Q Number 26. All contracts between you and
11 any other person including but not limited to the

judgment debtor exam.TXT
12 government for any work that you are currently
13 performing?
14 A There are none.
15 Q Now, you have, in the past, worked on a lot
16 of different software projects, right?
17 A Over my lifetime, yes.
18 Q Right. And sometimes it's on your shoulders
19 to create something and then demonstrate the project
20 and get a sale for it, right?
21 A Yes.
22 Q That's how you made your living, right?
23 A Yes.
24 Q Is that still how you make your living?
25 A Yes.

61

1 Q Okay. So what projects have you worked on
2 like that in the last five years?
3 A Nothing -- for a demonstration purpose? The
4 only ones I can think of is I've done variance of the
5 freight control system like with Horizon Lines on
6 some of the EDI stuff. Some has worked, some hasn't.
7 They're not quite up to speed on certain things. I
8 was looking at that and talking to some of the food
9 vendors as a variant of the freight control system to
10 work for them for placing direction orders.
11 Q Okay. So you have made some kind of a
12 proposal to Horizon Lines within the last five years?
13 A No, no, nothing that formal. I've worked
14 with their EDI by sorting out different transaction
15 sets that they were bringing on-line because they've
16 been going through a lot of rewrites and changes.

judgment debtor exam.TXT

17 Q And you have not produced any documents from
18 any of those parties as you sit here today?

19 MR. HOGAN: Objection, he's not asked to
20 produce.

21 Q (By Mr. Smith) I'm not trying to get into a
22 debate over that. I just want to know is anything
23 from any of those parties contained in what you
24 produced today?

25 A No.

D

69

1 MR. SMITH: Okay. Let's take five minutes.
2 My three hours are running fast.

3 (Recess taken.)

4 Q (By Mr. Smith) I would like to go back to
5 the bank statement you provided from the bank in
6 Florida. Your testimony again is that you produced
7 all the records that you had from Bank Atlantic,
8 right?

9 A Yes.

10 Q So if we look at page 31 on the right hand
11 side, it says page 1 enclosures 2. what are the
12 enclosures that are referred to there?

13 A I don't know. I usually don't keep the
14 first page.

15 Q You threw the rest of the statement out?

16 A Yes.

17 Q As well as any enclosures?

18 A Yes.

19 Q Was there more than one statement or one
20 page of this statement?

judgment debtor exam.TXT
21 A I don't know. I'm usually after this thing
22 where it's got the summaries and balances like I can
23 see what all that is.

24 Q So you started with a balance of \$64,147.95,
25 correct?

70

1 A okay.

2 Q As of April 17, right?

3 A Where do you see the April 17? At the top
4 there, okay.

5 Q And then it says debits of \$25,295.19?

6 A okay.

7 Q Where is the portion of the statement that
8 identifies the debits?

9 A I don't know.

10 Q You don't know so you don't have it in your
11 possession?

12 A This is -- no. This is all I had in the
13 stack of papers.

14 Q Is it your testimony you threw out the rest
15 of the statement that identified what the debits you
16 had made?

17 A I most likely did, yes. I didn't find it,
18 produce it. Or else I would have scanned it in too.

19 Q Okay. And page 32 is again page 1
20 enclosures 2. And my question again is where are the
21 enclosures?

22 A I don't know. This is the only page I had.

23 Q What are the debits? Can you just tell me
24 what were the amounts that came out of this account
25 of \$25,820? That's in the month for May 17 to June
Page 60

judgment debtor exam.TXT

71

1 17, 2007. Where did that money go?

2 A I don't know.

3 Q You're not able to say what happened to any
4 of that \$25,870?

5 A Not offhand, no.

6 Q What about the 25,295 that was expended from
7 April 17 to May 17 out of this account?

8 A I don't know.

9 Q What are the enclosures that come with your
10 bank statements?

11 A I don't know.

12 Q Okay.

13 A I don't look at them.

14 Q You don't look at them and you don't know
15 what you spent your money on during those two months?

16 A Not as we sit here, no.

17 Q Do you have any records that would reflect
18 what you spent your money on?

19 A No. I would have produced them.

20 Q Does Bank Atlantic provide your cancelled
21 checks with your statements?

22 A No. I think most banks hold those now.

23 Q I'm not asking about what most banks do.

24 A I don't -- they don't send them to me so I
25 assume they have them.

72

1 MR. HOGAN: They shred them.

2 Q (By Mr. Smith) So -- but your testimony is

12 A judgment debtor exam.TXT
13 Q I don't know. I don't recall.
14 Q Do you own any other URL besides
15 A I think I do. I'm just not sure if they're
16 still active.
17 Q What are the ones that you think you may
18 own?
19 A I've got a couple for Y. Hata. I think
20 it's -- there's ymlogistics.com and there's a
21 yhatalogistics.com.
22 Q Any others?
23 A That's all I can think of right now.
24 Q What was the source of the funds used to pay
25 for those URL registrations?

82

1 A I don't know.
2 Q What is the license fee that Y. Hata pays
3 you?
4 MR. HOGAN: Objection, vague as to time.
5 Q (By Mr. Smith) At the present time.
6 A I don't know offhand.
7 Q Okay. Do you have any understanding of how
8 the amount that Y. Hata pays you is determined?
9 A Yeah. It went through a formula and it's
10 calculated, divided up over a period of time, all
11 that kind of stuff. So I don't know what the license
12 fee component is and that sort of thing.
13 Q Okay. Is there a minimum amount that you
14 receive from Y. Hata?
15 A No. They were -- like I said, we totalled
16 the total amount over a period of years and divided

judgment debtor exam.TXT

17 it up and came to some agreement on what the average
18 monthly payment was going to be.

19 Q Okay. And so you receive the same amount
20 every month from them?

21 A Pretty much, yeah.

22 Q Well, you say pretty much. Is there
23 variables that determine how much you get?

24 A Yes. Sometimes they skip a month.

25 Q Okay. You're owed the same amount every

0

83

1 month regardless of whether they're late in payment?

2 A A different question, yes.

3 Q The answer is yes, you get a flat amount
4 every month?

5 A Yes.

6 Q And it doesn't vary depending on how many
7 questions they ask you or how much time you take in a
8 particular month to respond to their questions?

9 A I guess it could but I don't.

10 Q Up to now, it has not varied -- the amount
11 they pay you has not varied based on any sort of
12 amount of time you spend?

13 A No.

14 Q What approximately is that monthly number?

15 A \$5,000 something.

16 Q So going back to these bank statements that
17 show over \$20,000 moving through your account in
18 various months, what's the source of those funds?

19 A That would be Y. Hata.

20 Q Okay. Are they paying you 20,000 in one

judgment debtor exam.TXT
21 month or are they five months behind or what? How do
22 you reconcile the \$5,000 a month payment with the
23 larger amounts moving through your account in April,
24 May, June of 2007?

25 A They -- as I was telling you, I'm trying to

0

84

1 get new business. And in talking to them, I
2 discounted a balance of payment over a period of time
3 to them for bulk payment to buy new software, things
4 so I can get new business.

5 Q If I understand you correctly, you -- they
6 gave you a larger lump sum payment and then for some
7 number of months in the future, there won't be any
8 payment made, is that right?

9 A Correct.

10 Q I see. And is that agreement contained in
11 the materials that you've brought today?

12 A No.

13 Q Where is that agreement?

14 A It doesn't exist anywhere to my knowledge.

15 Q It was an oral agreement only?

16 A It was something I asked them if they would
17 help me 'cause I needed this new business and they
18 said they wanted something in exchange for it and we
19 worked out a discount that they were happy with and
20 it satisfied both parties for the time being.

21 Q Okay. So how much did they -- explain that
22 agreement. How much did they agree to give you?

23 A I don't recall the exact amount.

24 Q Approximately.

25 A They're fairly reflected in those couple

judgment debtor exam.TXT

85

1 statements.

2 Q Approximately how much?

3 A I don't know. Something in the 50 to 60
4 range, something like that.

5 Q They agreed to give you somewhere between 50
6 and \$60,000 in exchange for how many months of no
7 payments?

8 A I don't know. But they got a discount on
9 the entire license fee that was originally agreed to
10 in exchange for that.

11 Q How much was the discount?

12 A I don't recall the number.

13 Q Approximately how much?

14 A Could have been 10, 20 percent, something
15 like that.

16 Q When was this agreement reached?

17 A We started talking about it in late 2006.
18 It was part of the move to Florida to get new
19 business and I asked them if they would be agreeable
20 to as I saw what was coming if they worked with me so
21 I could try and get some of this new business. And I
22 don't remember exactly when we came to a final
23 agreement but they were agreeable from the beginning
24 when I told them I was going to go after new business
25 in another part of the country.

86

1 Q And you have absolutely no record that
2 reflects the amount that you agreed to discount of

judgment debtor exam.TXT
3 their obligation to you?

4 A No. These are good people. Whatever it
5 was, it was fair at the time and we discussed it and
6 it was acceptable to everyone. I don't recall
7 offhand. You know, Y. Hata, they're good people.
8 This is a little different.

9 Q So does Y. Hata possess any documents that
10 reflect the terms of this agreement?

11 A I don't know.

12 Q Okay. Was the agreement entered before
13 April of 2007?

14 A Yes.

15 Q So it's between January of 2007 and April?

16 A I don't know exactly when but as I told you,
17 when the medical situations came up last summer over
18 a year ago, I had some meetings with Y. Hata where I
19 discussed the situation and I was looking for new
20 business and things. And that's where the agreement
21 started.

22 Q Who were you meeting with at Y. Hata?

23 A I think it was probably Brian Marting.

24 Q When is the next payment that you expect to
25 receive from Y. Hata?

0

87

1 A I don't know.

2 Q Do you expect to receive a payment this
3 month?

4 A Other than this in the future, yes.

5 Q Do you expect to receive any payment for the
6 month of September?

7 A I don't know.

judgment debtor exam.TXT

8 Q Do you expect -- I'm only asking what you
9 expect, not whether you know. Do you expect to
10 receive a payment for the month of September?

11 A I'm not sure.

12 Q Do you expect to receive any payments from
13 Y. Hata through the end of the year?

14 A I'm not sure.

15 Q At the time you made your agreement with Y.
16 Hata, isn't it a fact that you were aware that
17 various parties had made motions to recover attorney
18 fees from you?

19 A Not sure. I don't remember when the motions
20 were filed.

21 Q So you may have been aware and you may not
22 have been aware? You don't know?

23 A I'm not sure. I'm not sure that had
24 anything really to do with it one way or the other.

25 Q You're a party to a divorce proceeding, is

0

88

1 that right?

2 A No. I'm in the process of filing an
3 annulment. That's all I'm aware of.

4 Q Have you ever prepared any asset information
5 in connection with a divorce proceeding?

6 A No.

7 Q You've never provided any assets or income
8 information in connection with a divorce?

9 A Not that I'm aware of.

10 Q Now, you said there's already one divorce
11 matter pending, is that right?